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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PETER DELVECCHIA,)	
)	Case No. 2:19-cv-01322-KJD-DJA
Plaintiff,)	
)	Las Vegas, Nevada
vs.)	JUNE 7, 2023
)	Courtroom 3A
FRONTIER AIRLINES, et al.,)	
)	MOTION HEARING
Defendants.)	
)	C E R T I F I E D C O P Y
)	
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE

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1 LAS VEGAS, NEVADA; JUNE 7, 2023; 3:28 P.M.

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3 P R O C E E D I N G S

4 COURTROOM ADMINISTRATOR: Peter DeVecchia versus
5 Frontier Airlines, 2:19-cv-1322-KJD-DJA. This matter is before
6 the Court on Docket 215, motion for protective order.

7 Counsel, make your appearance for the record,
8 please.

9 MS. MCLETCHIE: Maggie McLetchie for plaintiffs.

10 MR. MCKAY: John McKay for plaintiffs.

11 THE COURT: Good afternoon.

12 MS. MCLETCHIE: Good afternoon, Your Honor.

13 MR. MAYE: Brian Maye for defendants.

14 MR. MICHALEK: Charles Michalek, local counsel for
15 defendants.

16 THE COURT: All right. Good afternoon. As my
17 courtroom administrator indicates, we are here on Number 215,
18 which is Frontier's motion for protective order. 247 was filed
19 yesterday evening as a supplement to the plaintiffs' opposition
20 to Frontier's motion for protective order. That's a two-page
21 document. It had a few hundred pages of depositions attached,
22 deposition transcripts, attached to that. Additionally, I
23 intend to address Number 248, which is the stipulation
24 regarding the Rule 35 exam and related discovery that was filed
25 yesterday as well. That is gaveled. I intend to grant that,

1 but I'll address that at the end. Just so the parties know, I
2 will be addressing that today. So when we are finished, I am
3 hoping that we have all of the outstanding discovery issues
4 resolved and that all that is left is the Rule 30(b)(6)
5 deposition and then the Rule 35 examination.

6 As the parties know, I will give a brief background
7 as to the matters before the Court today, I will discuss the
8 legal standard, and then we will just go through topic by
9 topic. And I will have, on some of the topics, some questions
10 for the parties. On others, I have a pretty good idea of what
11 I'm going to do. But I will give the parties a brief moment on
12 each topic if you want to raise something or address something.
13 And then when we conclude that, we will have -- the transcript
14 will be the order on my decision as it relates to the issues
15 raised in 215.

16 So let's begin with the background. Frontier moves
17 for a protective order regarding certain of plaintiffs'
18 30(b)(6) topics. Plaintiff responds that the topics are
19 relevant to its claims. There is a question in terms of the
20 parties' position regarding the meet and confer and whether it
21 was sufficient. I will not address that issue here today.
22 We're just going to go through and address these topics one by
23 one and be done with it.

24 In reply, Frontier says the topics were overbroad
25 and are thus not relevant to the issues of the litigation.

1 The legal standard for motions for protective orders
2 generally, as the parties know, Federal Rule of Civil Procedure
3 26(c) governing protective orders provides "The Court may, for
4 good cause, issue an order to protect a party or person from
5 annoyance, embarrassment, oppression, undue burden, or
6 expense." And that's 26(c)(1). "The burden is on the party
7 seeking the order to show good cause by demonstrating harm or
8 prejudice that will result from the discovery." That's a
9 Nevada case, *Wells Fargo Bank, N.A., vs. Iny*, 2014 Westlaw case
10 1796216. And, again, from May 6, 2014. And Rule 26(c)
11 requires that the moving party make a particularized showing of
12 Rule 26(c)(1)'s enumerated harms. That's a 9th Circuit case,
13 *Foltz vs. State Farm Mutual Auto Insurance Company*, 331 F.3d
14 1122, 1138 from 2003. As it relates specifically to Rule
15 30(b)(6) depositions, once a 30(b)(6) witness satisfies the
16 minimum standard for serving as a designated witness, the scope
17 of the deposition is determined by relevance and
18 proportionality under Rule 26. And I'm going to have to spell
19 this name, P-A-S-I-E-C-Z-N-I-K, *Pasiecznik vs. Home Depot USA*.
20 That's a Westlaw case from 2022, the District of Nevada,
21 1652367.

22 And I would remind the parties, my decision as we go
23 through this today regarding relevance as it relates to
24 discovery, obviously, is not in any way to rule on the
25 admissibility of whatever evidence might be obtained during the

1 course of this discovery. Of course, admissibility will be for
2 another day and for Judge Dawson at the time of the trial.

3 So with that background and legal standard, I'm just
4 going to go through the topics as they were outlined one by
5 one. And so the first topic is the specific details of all
6 training given by Frontier to flight attendants Anna Bond,
7 Chelsie Bright (Sakurada) -- I assume that's a married name or
8 something similar to that -- Amanda Nickel, and/or Scott Warren
9 prior to March 28, 2019, on the topics of, A, the circumstances
10 in which Frontier considers physical contact by flight
11 attendants with adult and minor passengers is appropriate; F,
12 circumstances in which Frontier considers it appropriate for a
13 flight attendant to discuss alleged sexual misconduct with a
14 minor passenger and to place a hand on or near the minor
15 passenger's genital area.

16 Frontier argues that this is argumentative and
17 harassing. It is based on plaintiffs' allegation that Warren
18 asked A.D. whether he knew where Peter's hand was located and
19 that Warren hovered his hand over A.D.'s crotch to demonstrate.
20 Warren denies these allegations.

21 Plaintiff responds that the allegations about Warren
22 justify their questions about training related to the physical
23 conduct.

24 I can tell the parties, on this issue, I'm inclined
25 to deny the protective order. I do think that some questioning

1 on those facts is relevant for discovery purposes. But I will,
2 Mr. Maye -- or Ms. McLetchie -- I'll hear from either one of
3 you if you want to try to sway me either way, but I'm inclined
4 to deny it on this one.

5 MR. MAYE: Just one comment, Your Honor.

6 With respect to F, the circumstances in which
7 Frontier considers it appropriate for a flight attendant to
8 discuss alleged sexual misconduct with a minor passenger and to
9 place a hand on or near the minor's genital area, plaintiffs
10 amended their complaint and they're not alleging that flight
11 attendant Warren placed his hand on A.D.'s crotch, so we think
12 that, at the very least, that should be excluded from
13 consideration.

14 THE COURT: Well, but the way I read this is it's
15 more about the issue about the training related to the physical
16 contact and so -- or the conduct, and so I would be inclined to
17 allow some questioning on that issue because of that. I
18 understand even though it might not be a direct allegation in
19 the complaint, I think it's relevant to the issues that they
20 raise as it relates to the training.

21 MS. MCLECHIE: Just to be clear, the allegations in
22 the Amended Complaint are that the flight attendant Warren
23 placed his hand near A.D.'s groin area, and that's what the
24 topic is on, not on placing it on the groin area, just to be
25 clear.

1 THE COURT: All right. And, again, I think with
2 that, I will allow -- I will deny the protective order as to
3 that topic and allow questioning as to that. And, again, I
4 will trust that the parties will, you know, have the
5 appropriate questions and limit it to, you know, the issues and
6 not just rephrase question after question on the same topics.
7 But I do want to give you the chance to get into those
8 questions.

9 Topic Number 2 is the reason why Frontier did not
10 provide a manifest of passengers' names to the crew of Flight
11 2067 and the availability of such a manifest to members of
12 Frontier's flight operations center during Flight 2067.

13 Frontier argues that the plaintiffs are seeking this
14 to make the argument that, had the flight attendants checked
15 the manifest, they would have seen that Peter and A.D. shared a
16 last name. Frontier argues that this is irrelevant because the
17 flight attendants were concerned about inappropriate behavior,
18 regardless of family relation.

19 Plaintiffs counter that this is relevant to whether
20 Frontier exacerbated the situation by not providing its
21 employees the ability to look at plaintiffs' surname.

22 Again I can tell you, on this one, I'm inclined to
23 deny the protective order. I do think questioning on this will
24 be limited and it is relevant to their theory of the case. But
25 again I'll hear from Frontier if you want to make any further

1 argument on that, knowing which way I'm leaning.

2 MR. MAYE: Yes, Your Honor, just briefly. It's not
3 clear to us the reason for Frontier not providing the manifest
4 is relevant to whether it was more likely than not that Warren
5 and Shupe were motivated by racial animus. It appears to us
6 that any Frontier decision about whether to provide a manifest
7 to flight crews was an administrative decision and it has no
8 relevance to the issue of racial discrimination and putting
9 crews in a position where they are going to be more inclined to
10 commit racial discrimination.

11 THE COURT: All right.

12 MS. MCLETCHIE: To be clear, Your Honor, Frontier is
13 a defendant on the 1981 claim, Frontier Airlines itself, not
14 just the flight attendants. Further, plaintiffs are seeking
15 punitive damages from Frontier Airlines, and so whether
16 Frontier Airlines -- whether there's a history, a pattern of
17 discrimination, a knowledge of a need to act to prevent
18 discrimination against, in this instance against this mixed
19 race family, is certainly relevant.

20 It would have been easy, for example -- there's
21 evidence in this case and certainly allegations in this case
22 that the flight crew did not think that the father and son
23 belonged together because they were of different races --

24 THE COURT: So, Ms. McLetchie, I'm inclined to deny
25 it, and we'll allow you questioning to that as well.

1 MS. MCLEATCHIE: Thank you.

2 THE COURT: All right. Topic 3 was in the briefs,
3 but my understanding is it's no longer an issue and Frontier
4 withdrew its objections. I hope that's the case because I
5 don't have anything on Topic 3.

6 MR. MAYE: Our only concern, Your Honor, is the last
7 part, "any and all actions taken by Frontier related to the
8 subject matter of those documents, including the reasons for
9 such actions or inactions." We're not clear what that pertains
10 to. If it pertains to questions about pattern and practice,
11 failure to train, fostering an environment which encourages
12 discrimination, then we would object to that.

13 THE COURT: All right. Then I think that's more
14 appropriately handled with objections at the time of the
15 deposition. And, specifically, if the question is unclear, if
16 it's vague, certainly those objections would be appropriate,
17 but I think as an issue related to the protective order, I
18 don't think that rises to the level of me granting the
19 protective order. So you would be free to object at the time
20 of the deposition, but I think the topics are certainly
21 relevant and appropriate.

22 MS. MCLEATCHIE: And just to be clear, we do think
23 that they should provide a witness prepared to testify even on
24 the portion of this topic that they object to because whether a
25 defendant was aware of anti-discrimination laws and acted in

1 the fact of this awareness -- for example, we've explained that
2 the Department of Transportation, in January of 2017, I
3 believe, alerted airlines that they should take steps that when
4 they're executing their powers that are in furtherance of
5 safety and security that they do so -- that they be careful to
6 check themselves to be sure that they're not acting in bias, in
7 the exact way that we allege they've acted in this case. And
8 so Frontier's response and actions in response to the DOT -- in
9 response to the DOT alert is certainly relevant to the 1981
10 claim, in particular the punitive damages.

11 THE COURT: All right. And I've ruled that you're
12 allowed to question on that, so...

13 MS. MCLECHIE: Thank you.

14 THE COURT: All right. The next topic -- and I
15 think you'll find a theme here as we go forward now with some
16 of these topics -- is not as simple. That's Frontier's policy
17 against discrimination toward passengers. And I can tell you
18 that the concern I have is the following language: "Including
19 the number of times between March 28, 2014, and March 28, 2019,
20 that any employees were subjected to any such consequences as a
21 result of a finding that the employees have failed to follow
22 the policy. In addition, the facts and circumstances that led
23 to any such consequences."

24 Frontier argues that the Court's already ruled that
25 unrelated complaints against Frontier are irrelevant.

1 Plaintiffs argue that the Court overlooked
2 plaintiffs' allegations that Frontier acts with reckless
3 indifference to the constitutionally-protected rights of all of
4 its passengers of mixed races, color, and different ethnicities
5 by turning a blind eye to acts of discrimination by its
6 employees and refusing to train or discipline its employees
7 concerning acts of discrimination.

8 I can tell you that I am inclined to grant the
9 protective order as it relates to the *other findings* and *other*
10 *acts*. I know that the plaintiff disagrees with some of my
11 prior rulings as it relates to the discovery and some of the
12 other acts and other investigations and not allowing that in,
13 but I think this fits with those prior rulings that I have
14 found that that should be limited and not allowed to be looked
15 into during discovery.

16 But, Ms. McLetchie, I will hear from you on that
17 one, given that I'm inclined to grant that portion of the
18 protective order of that topic, and that is the March 28, 2014,
19 to March 28, 2019, *other investigations*. So go ahead.

20 MS. MCLECHIE: Thank you, Your Honor. And,
21 obviously, I'm new to this case, but I've studied the orders,
22 and my view is the previous orders were addressing prior
23 motions to compel and a prior motion for sanctions, and the
24 Court didn't hold that prior complaints were irrelevant; the
25 Court limited the number of -- the number of complaints -- the

1 Court limited it to the last five years, I believe, and to
2 domestic flights and allowed defendant to produce those in
3 redacted fashion. The Court has limited that information
4 because it wasn't proportional, not because it wasn't relevant.
5 And, frankly, the Court's limitation with regard to the request
6 for production, in some of the orders, there's language that
7 plaintiffs can seek the information through the other means.
8 Well, here we are. We're seeking the information through other
9 means.

10 And I want to point out that some of the Court's
11 prior -- that some of the Court's prior reliance, I think it's
12 worth explaining that the *Karrani* case on these issues is
13 different. In the *Karrani* case, the question was whether the
14 flight attendant had engaged in prior discrimination. It
15 wasn't a question of whether the corporate defendant should be
16 held liable under 1981 and whether the corporate defendant had
17 a history of reckless indifference to civil rights. And here,
18 that is what this case is alleging with regard to Frontier. So
19 the information isn't just relevant with regard to the specific
20 defendants, but we also have the issue where these complaints
21 don't list specific defendants' names.

22 The database, it's my understanding that information
23 is no longer available. My understanding is we were allowed to
24 do another interrogatory but that -- the interrogatory response
25 was, "The complaints don't list the other defendants." That

1 doesn't mean the other -- that the individual defendants
2 weren't involved, Your Honor; it means that the database
3 doesn't show their names. And so certainly asking information
4 about these other claims is certainly relevant, in fact, could
5 be the only way that plaintiff gets access to this information.

6 Notably, the reliance -- the defendants' continued
7 reliance on the *Karrani* case is a little bit perplexing
8 because, in that case, it was a summary judgment case and the
9 plaintiff had had access, I think, to ten years of complaints
10 without the restriction with regard to the names of the
11 complainants and without regard to domestic versus
12 international flights. So we're in a very different procedural
13 posture. The Court determined, I think largely -- largely at
14 least initially, because of the third-party rights of the named
15 complainants, that that information should be limited, but it
16 has not specifically been before this Court whether we could
17 access -- we can ask information about complaints over the last
18 five years at a 30(b)(6) deposition, and it's my view we should
19 be able to more so because of the Court's prior rulings.

20 This case, obviously, defendants disagree and refute
21 the allegations. Much of their motion to compel is focused on
22 the idea that, well, we deny this and defendant Warren says he
23 didn't do that. That's not the question today. The question
24 is, what are the allegations, and we have allegations of very
25 serious racial discrimination and that Frontier Airlines is

1 responsible, that there are -- and we -- in discovery, we have
2 obtained complaints, albeit in redacted form, that show there
3 were two and a half complaints per week by passengers feeling
4 that they had suffered some form of racial discrimination.
5 That is significant. We also have deposition testimony from
6 flight attendants showing that they did not get training
7 avoiding these issues. These questions --

8 THE COURT: So let me ask you, how do records of --
9 "any employees were subject to consequences as a result of a
10 finding that the employees had failed to follow the policy."
11 So how are the consequences of other employees on other flights
12 that they may have faced if failing to follow discrimination
13 policies, how are the consequences and the things that they
14 suffered from other unrelated investigations, how is that
15 relevant here again?

16 MS. MCLEATCHIE: Because whether Frontier Airlines
17 takes racial discrimination claims seriously is relevant to
18 whether it effectuated appropriate policies and training and
19 whether it should be liable for reprehensible conduct under the
20 punitive damages case law.

21 THE COURT: So they're not taking action against
22 these employees after there are findings that show a pattern
23 and practice of Frontier just ignoring these things and --

24 MS. MCLEATCHIE: Correct. And what we've unearthed
25 in discovery is that Frontier Airlines essentially has -- never

1 does a real investigation. We have not been able -- they take
2 these complaints, but they don't -- from what we have been able
3 to unearth in discovery, they don't have a meaningful process
4 to investigate whether there is any validity to these claims
5 and Frontier Airlines does not take steps to avoid and prevent
6 discrimination.

7 THE COURT: All right. So, you know, I did limit
8 them in the -- you know, in the other requests, in the prior
9 hearings on discovery, and said that there were other ways that
10 they could obtain information. You know, I mean, I -- so I
11 don't know -- I mean, I did rule that unrelated complaints were
12 irrelevant, but I also ruled that they would be able to get
13 into some of those issues through other discovery mechanisms.
14 I guess the question is, what would be wrong at a deposition
15 with your witness to just delve into this? I mean...

16 MR. MAYE: Your Honor, that ruling was before there
17 was extensive discovery on these prior incidents and before
18 Your Honor ruled that these were unrelated to the subject
19 incident. That ruling was, of course, before Judge Dawson's
20 rulings, and this case -- excuse me -- this issue has been
21 thoroughly litigated by the parties. And with respect to
22 Frontier, Judge Dawson ruled that "The Court agrees with the
23 Magistrate Judge that plaintiffs have not sufficiently stated
24 that the Frontier decision-makers were responsible for the
25 outcome on this particular flight. The Court finds it would be

1 more reasonable for plaintiffs to inquire about previous
2 incidents of alleged racial discrimination by defendants Warren
3 and Shupe because they were the ones directly involved.
4 There's not enough of a basis alleging that it was Frontier as
5 a corporation that fostered an environment of racial animus or
6 that Frontier's practices or policies were a *but for* cause of
7 the injury."

8 Judge Dawson made clear that this case is not a
9 pattern and practice case against Frontier. With respect to
10 prior incidents and using pattern and practice, the Court has
11 ruled that that may be relevant to the issue of the state of
12 mind of the actors involved, Shupe and Warren, but Shupe and
13 Warren were not involved in any of these prior incidents, so
14 there is absolutely no connection between the prior incidents
15 and this incident. And this has been resolved by Judge
16 Dawson's ruling on the objections to the motions to compel, the
17 fourth and fifth motions to compel.

18 THE COURT: And I guess, Ms. McLetchie, tell me
19 again why it's different now than when my prior ruling
20 precluded this and Judge Dawson upheld it.

21 MS. MCLETCHE: So with all due respect to my same
22 co-counsel, the prior orders were based on the showing in those
23 motions to compel, and I don't think and my co-counsel doesn't
24 think that we made it clear enough that we wanted this
25 information not just with regard to the state of mind of

1 specific human individual defendants but also with regard to
2 the 1981 claim against Frontier and the punitive damages
3 against Frontier.

4 Further, we have since also discovered that it's
5 unclear from the records which defendants were involved in
6 which incidents and whether anybody has ever been disciplined.
7 During depositions, that question came up, if anybody's ever
8 been disciplined for treating a passenger on a Frontier
9 Airlines flight in a racially discriminatory manner, and during
10 depositions, we were told over and over, "you'd have to ask
11 HR." That's what you do during a 30(b)(6) deposition, you ask
12 the company.

13 So this -- I don't think the record was clear about
14 why we were seeking the information. We're not just seeking it
15 because of the -- to figure out if the individual defendants
16 had ever been charged with racial discrimination by passengers.

17 And, by the way, I also think that there was some
18 confusion because the fact that it's not in their employee file
19 doesn't mean that there weren't complaints against them. It
20 only actually could reflect that there were complaints against
21 them and Frontier Airlines chose not to take action, which
22 would actually be evidence of Frontier Airlines' responsibility
23 and culpability under the punitive damages reckless
24 indifference standard. Both other complaints and against other
25 flight attendants and other flight staff, as well as against

1 these specific defendants, are ripe fodder for discovery and
2 they're very appropriate for a 30(b)(6) deposition, Your Honor.

3 THE COURT: You know, in the context of the bigger
4 picture of Frontier's liability, you know, I don't specifically
5 remember the arguments we made at the last hearing, you know, I
6 didn't specifically go back and look at that transcript, but it
7 seems to me that when we talk about it in the context of
8 Frontier's potential liability and the way they handle these
9 and that being some sort of -- you know, creating this
10 atmosphere or, you know, where the discrimination is allowed to
11 go on, it starts having, at least in my mind, some relevance.

12 What's your response to that, especially when we're
13 talking now in a limited 30(b)(6) deposition where it's not
14 going to be, you know, your client having to get, you know,
15 thousands of records, go through, you know, hundreds of
16 thousands of pages of stuff to look for this stuff? It's
17 something I would assume they could prepare fairly easily on.

18 MR. MAYE: Your Honor, this issue has been
19 explicitly rejected by Your Honor and --

20 THE COURT: Did I reject it -- remind me, did I
21 reject it in the context of Frontier's potential liability and
22 how they handled these issues?

23 MR. MAYE: That's correct. And Your Honor and Judge
24 Dawson ruled that, to the extent pattern and practice could
25 potentially be relevant, it would be limited to plaintiffs

1 establishing a connection between the subject incident and the
2 prior incident. And because plaintiffs have not established a
3 connection, then those prior incidents are irrelevant and not
4 proportional to the needs of the case.

5 THE COURT: All right. I'm going to hold my
6 decision on Topic 4 for now. I intend to decide before we
7 leave today, but I may take a quick break on that one. I want
8 to go to Topic 5.

9 MS. MCLEATCHIE: Your Honor, may I just read from the
10 *Karrani* case, a snippet from that case that I know the Court
11 relied on previously?

12 THE COURT: Not now. I may want you to give that to
13 me when I go back, but I want to --

14 MS. MCLEATCHIE: Okay.

15 THE COURT: All right. Topic 5 is the contents of
16 Frontier's flight attendants manual and training materials that
17 mention any of the following subjects: H, the prohibitions of
18 flight attendants all congregating in one area of the aircraft
19 during flight or allowing all flight attendants to become
20 focused on a single issue during flight; and, I, the
21 prohibition against more than one flight attendant being in the
22 cockpit at the same time.

23 Frontier argues that the plaintiffs are trying to
24 show that Frontier's flight attendants were negligent by
25 violating these policies on the date in question but plaintiffs

1 have not alleged negligence and discrimination can only be
2 intentional.

3 Plaintiffs respond that this is relevant to show
4 that the employees were not following protocol and were
5 violating other protocols in their zeal to have plaintiffs
6 turned over to the police.

7 I can tell you, Counsel, Mr. Maye, that I'm inclined
8 on this one -- I do think it's relevant for they weren't
9 following protocols or violating other protocols in their zeal
10 to, you know, have them turned over to the police. I'm not
11 saying I believe those facts, but I think it's relevant that
12 they be allowed to ask those questions. So they're not saying
13 it's to show negligence; they're saying it's to show that they
14 were not following protocols and violating other protocols as a
15 result of their zeal as it relates to this issue, and I think
16 that's probably relevant to their theory as a whole, but I'm
17 all ears if you want to convince me otherwise.

18 MR. MAYE: Our only comment would be, Your Honor,
19 that whether they were congregating in the cockpit doesn't make
20 it more likely than not that Warren and Shupe were motivated by
21 racial animus.

22 THE COURT: But I think if they're violating
23 policies, an argument can be made that they violate policies
24 when it suits them and they don't -- you know, they follow them
25 when it suits them. So, I mean, I can see the relevance of

1 that, even if it's for impeachment grounds, and so I -- I'm
2 going to deny the protective order as it relates to that as
3 well.

4 And so you'll be able to ask questions about that as
5 well.

6 Topic 6 is the text of the *Relationships With*
7 *Customers* subsection of the *Competition and Fair Dealing*
8 section of Frontier's Code of Ethics contained within its
9 employee handbook produced in this action and the number of
10 times between March 28, 2014, and March 28, 2019, that any
11 employees were subjected to any such consequences as a result
12 of a finding that the employees have failed to follow the
13 *Relationships With Customers* subsection, in addition, the facts
14 and circumstances that led to any consequences.

15 Frontier again argues that the Court already ruled
16 on unrelated complaints and that they are irrelevant.

17 Plaintiffs argue that this is relevant to Frontier's
18 corporate condemnation of discrimination.

19 Ms. McLetchie, I presume the arguments in this topic
20 are similar to the arguments in Topic 4, meaning that the Court
21 misconstrued, or whatever happened at the last hearing, the
22 Court didn't understand the relevance argument and it again
23 goes to the Frontier pattern and practice of not addressing
24 things and creating this culture of allowing discrimination to
25 happen and the things and that's why it's relevant?

1 MS. MCLECHIE: That's correct. And it's also
2 relevant in a similar way to the congregating in the cockpit
3 and the other areas of the plane is relevant, because we've
4 alleged that Warren inappropriately misidentified himself as
5 Kevin, which is a violation of policy, and that they generally
6 mistreated and treated our clients differently because of race.

7 THE COURT: Right. So I think on this one as
8 well -- and we're going to have one more -- I'm likely to just
9 take these three under advisement for a few minutes and then
10 come back and rule on those.

11 But anything that you want to say on that?

12 MR. MAYE: Really quickly, your Honor, I apologize,
13 going back to Topic 5, the last sentence in H, "Allowing all
14 flight attendants to become focused on a single issue during
15 flight," we believe that's very argumentative and it's not
16 clear what that means. You know, flight attendants are not
17 trained to only focus on one issue, and I don't know how that's
18 relevant to the case, and I don't think there's any evidence
19 that the flight attendants were focused on one issue during the
20 flight.

21 THE COURT: Well, again, I think they're -- I'm
22 going to allow them to inquire into that.

23 MR. MAYE: Okay.

24 THE COURT: All right. Topic 6 I will take under
25 consideration, like I have with Topic 4, and it's likely going

1 to be the same with Topic 8, but we'll get there after we do
2 Topic 7, which is why no investigation or disciplinary action
3 against defendant Scott Warren resulted from Peter DeVecchia's
4 2019 complaints -- or complaint to Frontier that Warren had
5 falsely identified himself as Kevin, struck Peter DeVecchia on
6 the head, and physically took his child away from him during
7 the flight.

8 The defense, Frontier, argues this is argumentative
9 and harassing and Warren denies the allegations that he
10 identified himself as Kevin.

11 Plaintiffs argue that this is relevant to their
12 allegations, regardless of whether or not Warren denies them.

13 Again, I think for discovery purposes this is
14 relevant even if Warren denies it, and they can inquire as to
15 why there was no investigation or disciplinary action. And I
16 think a 30(b)(6) witness can answer that. But I will, before I
17 finalize that ruling, hear from counsel.

18 MR. MAYE: Just quickly, your Honor, our position is
19 that there was an investigation. So we're not opposed to their
20 asking about what investigation was conducted and what was the
21 result of that investigation, but to include a topic of why
22 there wasn't an investigation, why Mr. Warren wasn't
23 disciplined --

24 THE COURT: So they asked why wasn't there an
25 investigation, and your witness says, there was an

1 investigation and here's what the investigation was and here's
2 what the investigation led to and here's what discipline or no
3 discipline was done. That should be no more than ten minutes,
4 I would think, so I'm going to deny the protective order as it
5 relates to that.

6 8 again is similar to 6 and to 4 in the sense that
7 it talks about the years of 2014 to 2019, but let me read into
8 the record what Topic 8 is. "The text of the *Compliance With*
9 *Laws and Regulations* section of Frontier's Code of Ethics
10 contained within its employee handbook produced in this action
11 and the number of times between March 28, 2014, and March 28,
12 2019, that any employees were subjected to any such
13 consequences as a result of a finding that the employees had
14 failed to follow the compliance with the *Laws and Regulations*
15 section in circumstances where the laws and regulations
16 involved were those that apply to discrimination against
17 passengers on the basis of race or ethnicity. In addition, the
18 facts and circumstances that led to any such consequences."

19 Again Frontier argues the compliance with *Laws and*
20 *Regulations* section of their Code of Ethics is irrelevant and
21 not proportional and that the Court has already ruled that the
22 unrelated complaints against Frontier are irrelevant.

23 Plaintiffs argue that this is relevant to their
24 allegations that Frontier does not enforce its policies of
25 requiring employees to comply with applicable laws and

1 regulations.

2 Again, Ms. McLetchie, is this the same substance of
3 argument as it relates to Topic 6 and Topic 4, that is, the
4 Court's misapprehension of the reason you needed those?

5 MS. MCLECHIE: Yes, Your Honor.

6 THE COURT: All right. So I will take that one
7 under advisement as well. And I think those are the only three
8 that have similar issues.

9 So let's then go to 10. Instances between March 28,
10 2014, and March 28, 2019, in which any employee or agent of
11 Frontier is alleged to have used the terms -- and it's the
12 proverbial N word -- quote, you people and your, quote -- I'm
13 sorry -- and/or, quote, your kind, end quote, in communications
14 with or about any non-White passenger of Frontier and the
15 details of Frontier's investigations of such occurrences and of
16 any discipline imposed on the employment -- on the employees or
17 agents.

18 Frontier argues that this is argumentative and
19 harassing and the Court has already ruled that unrelated
20 complaints against Frontier are irrelevant.

21 Plaintiff argues that although there are no
22 allegations that the employees at issue here used this
23 language, this is relevant to Frontier's indifference toward
24 the civil rights of passengers of color.

25 Ms. McLetchie, I can tell you I'm inclined to grant

1 this protective order request because there's no allegations
2 this language was used in this case, and I'm not sure that
3 other instances of the language being used are relevant. And I
4 guess I understand your argument is that, if there are
5 occurrences and Frontier doesn't do anything, that shows
6 indifference?

7 MS. MCLECHIE: If they don't take steps even when
8 the most egregious type of conduct you can imagine is engaged
9 in by a flight attendant, certainly that is very relevant to
10 our pattern and practice claims and our punitive damages claims
11 against Frontier Airlines. Here, we don't need -- in order to
12 show punitive damages, we don't need to show that there's a
13 history of exactly the same kind of racial discrimination that
14 occurred here. We need to show that Frontier Airlines acted
15 with reckless disregard for passengers' civil rights. And
16 certainly if there are multiple instances in which this
17 occurred and Frontier Airlines did nothing, then certainly
18 that's relevant. If they find this to be offensive and this
19 has never happened, as you said with a prior topic, it can be a
20 very short part of the deposition and they can say, there has
21 never been such a complaint. But if Frontier Airlines even --

22 THE COURT: But isn't that so different than this --
23 I mean, the allegations in your case are completely different
24 than that. I mean, at some stage, I mean, is there not a
25 cutoff for how far you can get into this stuff? I mean, every

1 remark, everything said, you know, is going to be discoverable
2 because it shows that Frontier, if they're not addressing every
3 single one, is a pattern and practice?

4 MS. MCLETCHIE: They're not addressing any single
5 one, is what we believe to have occurred, based on our
6 discovery.

7 THE COURT: So what in discovery do you have that
8 that sort of -- that that sort of language is occurring
9 regularly on Frontier flights and they're just ignoring it?

10 MS. MCLETCHIE: We have several complaints with that
11 kind of language in discovery. And even though in -- to be
12 clear, there are different actors and there are actors that
13 were employed by Frontier Airlines that are not named
14 defendants, Your Honor. Their conduct, the other people on the
15 flight, the other flight crew, their conduct is relevant to the
16 claims against Frontier Airlines.

17 And I think defendant Frontier Airlines makes too
18 much of the fact that there are specific types of allegations
19 against the Black flight attendant, defendant Warren, and the
20 fact that he didn't like the fact that this was a -- this was a
21 White man with a Black child, but there are other people that
22 felt uncomfortable with A.D. because of how dark-skinned he
23 was. They assumed he must speak a different language. They
24 assumed -- they made all kinds of assumptions based on race.

25 And so if Frontier Airlines took these racial

1 discrimination complaints seriously and engaged in basic
2 training of their employees to not make assumptions based on
3 race and to avoid discriminatory conduct against Black people
4 and against mixed race families, these -- it's our allegation
5 that this type of conduct could be avoided and that punitive
6 damages, if we show this pattern and practice, are appropriate.

7 Whether a fact-finder thinks it's -- these specific
8 instances are similar enough to warrant punitive damages is for
9 the fact-finder, not -- in my view, the Court doesn't need to
10 say -- doesn't need to say, this is too dissimilar from the
11 specific allegations and just because they didn't use -- you
12 don't allege that the N word was used, other complaints against
13 either the actors at issue in this complaint or other Frontier
14 flight crew are relevant, I just don't think that that's
15 appropriate, Your Honor. And, again, if they don't think this
16 occurred and they think this is argumentative and offensive, it
17 should be a very short portion of the deposition. And they
18 can't show that it's somehow burdensome, harassing, and not
19 proportional if they don't think this occurred.

20 THE COURT: Well, and they're not saying it's not
21 proportional; they're just saying it's argumentative,
22 harassing, and what else?

23 MR. MAYE: Your Honor, Judge Dawson has thoroughly
24 rejected this approach. He has rejected the pattern and
25 practice of Frontier. Judge Dawson determined it's

1 speculative, so Judge Dawson said, no, you can't go down this
2 path; there has to be a connection to this case.

3 And contrary to counsel's representation, there's
4 been no evidence that the N word was used by any flight
5 attendant in any of the prior complaints. From my
6 recollection, the N word was used once by a passenger against
7 another passenger. So this is way out of bounds. It has no
8 connection to our case.

9 And, again, this is not pattern and practice. Prior
10 complaints are only relevant, potentially relevant, to show
11 possibly the mindset of the same actor that was involved in the
12 subject incident and the prior incident. There was no evidence
13 that any of the flight attendants here or the pilots were
14 involved in any prior incidents. If we go down this path,
15 it's, again, trial within trial --

16 THE COURT: All right. I'm going to grant the
17 protective order as it relates to that. I do think we are now
18 starting to get down rabbit holes that are just too tenuous. I
19 understand the argument that it's a pattern and practice, but
20 that doesn't -- that's not a way to encompass everything. So I
21 do think that one gets too far afield, and so I will use my
22 discretion and grant the protective order as it relates to
23 questions related to Topic 10.

24 Topic 13, Frontier's employee handbook *Standard of*
25 *Conduct* Section 4, including, without limitation, policies on

1 physical violence and dishonesty, falsification, and
2 misrepresentation.

3 Frontier argues this is overbroad and vague,
4 harassing, and argumentative, and the Court has already ruled
5 that unrelated complaints to Frontier are irrelevant.

6 Plaintiffs argue that this is relevant to the
7 specific portions of the handbook that Warren violated.

8 I will tell you, on the defense side, that I'm
9 inclined to deny this one. I do think that this has discovery
10 relevance to their theory regarding Warren. You know, whether
11 it's overbroad or vague, I don't think this is the appropriate
12 time for me to use a protective order on that. There are other
13 objections that can be made. And I don't think it's so
14 harassing and argumentative that it's a -- should be protected.
15 And, again, I think this one falls outside of the unrelated
16 complaints and so I think it goes directly to Warren, and
17 because it goes to the plaintiffs' theory regarding Warren, I'm
18 inclined to deny that, but I'll hear from counsel.

19 MR. MAYE: Well, Your Honor, the allegation is that
20 flight attendant Warren violently struck Mr. DeVecchia twice
21 in the back of the head, but the record reveals that not one
22 person observed that, not the passenger seated right next to
23 Mr. DeVecchia, behind Mr. DeVecchia, across -- well, beyond
24 that, Your Honor...

25 THE COURT: I mean, that will be for the

1 trier-of-fact.

2 MR. MAYE: Okay.

3 THE COURT: We're talking about what's discoverable
4 and what questions.

5 MR. MAYE: Okay. With respect to dishonesty,
6 falsification, and misrepresentation, permitting that
7 discovery, you know, suggests that the crew is lying and, you
8 know --

9 THE COURT: It may suggest it, but it's not a
10 finding of it. They're going to have to lay the foundation,
11 get that evidence in at trial, and Judge Dawson may agree with
12 you at trial that it's not coming in. But for purposes of
13 discovery, I'm inclined to allow it. But --

14 MR. MAYE: Just a question, Your Honor. Will they
15 be allowed to ask about the content and how it's presented to
16 the subject crew or --

17 THE COURT: Well, I think they're allowed to ask
18 some questions about the content and how Frontier, you know,
19 conveys that to the employees and what they talk about. I
20 mean, they should be allowed some questions about how that
21 interacts with the training of the employees. That's sort of
22 the reason they would be asking the questions to begin with.

23 And, again, I'm hoping that the parties -- you know,
24 you're not going to take an hour and a half on that topic
25 during the -- you know? So I'm assuming the parties are going

1 to be working in good faith to ask the questions and then move
2 on to other topics.

3 Number 17, why no investigation was conducted or
4 discipline imposed relating to Captain Rex Shupe's and First
5 Officer Mullin's failure to follow written procedures for a
6 Threat Level 2 on Flight 2067, including, without limitation,
7 failing to lock down the cockpit, failing to notify air traffic
8 control, failing to consider diversion to a different airport,
9 and failing to prepare for interception by Department of
10 Defense fighters.

11 Frontier argues this is irrelevant because whether
12 Frontier followed the Threat Level 2 procedures has nothing to
13 do with whether it intentionally discriminated against
14 plaintiffs. They argue that this is aimed at establishing
15 negligence which plaintiffs have not alleged.

16 Plaintiffs argue this is relevant to their assertion
17 that Frontier condones violations of written procedures.

18 Again I'm inclined to deny this one because I think
19 plaintiff has created enough relevance within the theory and
20 context of their allegations to make this discoverable. But,
21 again, I'm inclined to hear from counsel as it relates to this
22 topic.

23 MR. MAYE: Again, Your Honor, our position is,
24 whether or not Captain Shupe asked for fighter jets to escort
25 the aircraft doesn't have any bearing on his mindset and

1 whether or not he was motivated by racial animus.

2 Also, a point, Your Honor, Captain Shupe did not
3 know the races of the plaintiffs, so our position is it is not
4 possible for any of this material and this content to be
5 relevant to the issue of plaintiffs' 1981 claim against Captain
6 Shupe.

7 THE COURT: Well, and so maybe a quick answer to it,
8 the reason there wasn't an investigation, is because we're not
9 going to get the Department of Defense jets out to escort a jet
10 under these circumstances, but, again, I think it is something
11 that they should be allowed to inquire into with this witness,
12 and so I'll deny the protective order as to that and allow the
13 inquiry into that topic.

14 Topic 18, why no investigation was conducted or
15 discipline imposed relating to Captain Rex Shupe's and First
16 Officer Mullin's failure to follow written procedures on Flight
17 2067 requiring that no more than one flight attendant be
18 permitted in the cockpit at any one time.

19 Frontier argues this is irrelevant because whether
20 the Captain and First Officer fail to follow written procedures
21 on this issue has nothing to do with whether Frontier
22 intentionally discriminated against plaintiffs. This is aimed
23 at establishing negligence, again, which plaintiff has not
24 alleged.

25 Plaintiff argues that this is relevant to their

1 assertion that Frontier condones violations of written
2 procedures.

3 You know, again, to quote Bob Dylan, you don't have
4 to be a weatherman to see which way the wind blows. And this,
5 again, I understand your arguments, but I'm inclined to allow
6 them to get into this, again, because it does fit into their
7 theory that employees didn't follow procedures and that's why
8 it led to this whole incident in the first place. So I think
9 they're allowed some limited inquiry, but I'll let you make a
10 further record if you like.

11 All right. I'll deny the protective order as it
12 relates to Topic 18 and, again, allow questioning as it relates
13 to that.

14 Topic 27, plaintiff reserves the right to inquire
15 into the content of any and all documents produced as of the
16 date of the deposition by Frontier. Without limiting the
17 foregoing, plaintiffs intend to inquire into the content of all
18 documents referenced in the list of topics of this notice, as
19 well as those listed in Exhibit A. And Exhibit A references
20 the unrelated discrimination complaints against Frontier.

21 Frontier argues that this is unbounded and overbroad
22 and, to the extent it references unrelated passenger
23 complaints, the Court has already found that these are
24 irrelevant.

25 Plaintiffs argue that the defendants are routinely

1 asked questions about documents that they produced in
2 discovery. Plaintiffs are willing to provide a list of
3 questions ahead of the deposition so that Frontier can
4 designate a witness with knowledge about the documents that
5 plaintiff will address.

6 So, Ms. McLetchie, I'm inclined to deny this. If
7 you provide a list of those questions, and as long as those
8 questions are not irrelevant and are proportional, I'm inclined
9 to allow it. Are you proposing that you provide a list of
10 those questions to Frontier?

11 MS. MCLECHIE: We would be happy to provide a list
12 of those questions to Frontier in advance of the deposition,
13 Your Honor.

14 THE COURT: My only concern is that will we be back
15 here in three weeks with an objection to the list of those
16 questions and...

17 MS. MCLECHIE: We hope not. And we will certainly
18 engage in meaningful meet and confer efforts.

19 THE COURT: Well, so -- and I would say this: I
20 would hope, by the time we're done here today, you'll have an
21 idea of what the Court's position is on what you're allowed and
22 not allowed to do. And once I make a ruling here in a few
23 minutes on whether I allow the other complaints or not, if I
24 decide that we don't, then, obviously, this would be limited by
25 those complaints. And so to the extent I say, you don't get to

1 go into those things and I'm granting the protective order,
2 that would limit this, but you would still be allowed to ask
3 the other questions.

4 MS. MCLEATCHIE: Understood.

5 THE COURT: Okay? Understood, Counsel?

6 MR. MAYE: Yes, Your Honor.

7 THE COURT: All right. And, again, I'll get back to
8 those other here in a minute. We're getting there.

9 Topic 30, the details of investigations conducted by
10 Frontier concerning the human trafficking incidence reports --
11 I'm sorry -- concerning the human trafficking incident reports
12 produced by Frontier to plaintiffs up to the date of the
13 deposition.

14 Frontier argues that the Court has already ruled
15 that the unrelated reports of trafficking are irrelevant.

16 Plaintiffs argue that they're relevant to Frontier
17 condoning accusations of human trafficking without follow-up.

18 It seems to me this topic is similar to the other
19 issues, that is, unrelated investigations. Ms. McLetchie, is
20 that -- am I reading that correctly?

21 MS. MCLEATCHIE: I would agree, but I would also
22 point out that certainly the facts and circumstances regarding
23 other human -- other instances in which Frontier believed that
24 there might be human trafficking certainly can show that this
25 case was different and that there is -- I want to be clear.

1 There were flight attendants in this case that thought that
2 there was something -- there's evidence that the flight
3 attendants in this case thought something was awry and that
4 they were concerned about what was going on here because of the
5 different races and they thought there might be sex
6 trafficking. Certainly looking at other cases in which there
7 were potential complaints about sex trafficking to see if
8 there's a pattern and practice of other mixed race families --
9 I know that there's a big news report about a similar incident
10 with a Black 21-year-old girl and a five-year-old -- a
11 five-year-old African-American child that was similar to this
12 case. Certainly that's relevant to the punitive damages
13 against Frontier.

14 But also, if the other facts concerning sex
15 trafficking were very, very different from this case, it also
16 goes to show that there was racial -- there was racial animus
17 and discrimination here, Your Honor.

18 THE COURT: All right. Counsel?

19 MR. MAYE: Your Honor, I thought I heard counsel say
20 that there's evidence that the flight attendants were concerned
21 because of the different races of the plaintiffs. I could have
22 misheard her, but there is absolutely no evidence whatsoever
23 that that was the case. This topic is just like the other
24 topics in which Your Honor and Judge Dawson ruled that prior
25 incidents have no connection to this case, and to rule that

1 they can ask a 30(b)(6) about the prior incidents would
2 completely unravel Judge Dawson's ruling that the prior
3 incidents are not relevant, they're not proportional. And our
4 position is, this is the law of the case and 30(b)(6) witnesses
5 cannot be asked about the prior incidents about Frontier
6 training, investigations, why people aren't disciplined because
7 of, you know, the allegations of the prior incidents. This has
8 all been litigated and resolved. That's our position, and we
9 hope Your Honor agrees with us.

10 THE COURT: Okay. So this, then, does -- and I hear
11 what Ms. McLetchie is saying, that it's the human trafficking
12 component and it may make this a little different than the
13 other ones, but generally, it's the same because it has to do
14 with other investigations. And so I'm going to hold off on
15 that because I think it fits into the other three. So now we
16 have a fourth.

17 And as I look at Topic 31, we may have a fifth
18 because that is the details of disciplinary actions against any
19 Frontier employee and/or additional training provided to any
20 Frontier employees relating to the subject matter of human
21 trafficking incident reports produced by Frontier to plaintiff
22 up to the date of the deposition.

23 Frontier again argues that the Court's already ruled
24 on the unrelated reports and that they are irrelevant.

25 Plaintiffs argue it's relevant to Frontier condoning

1 accusations of human trafficking without follow-up.

2 Again, Ms. McLetchie, I think this falls into the
3 same category, certainly, as 30. It has to do with human
4 trafficking and the other incidents. I assume you have the
5 same arguments why it's relevant and I should allow that?

6 MS. MCLETCHE: Yes, Your Honor.

7 THE COURT: And, defense, I assume it's the same as
8 well?

9 MR. MAYE: Yes, Your Honor.

10 THE COURT: So I will take 31 as well under
11 advisement here and come back in a few minutes.

12 And I think 32 fits into that as well. Am I reading
13 that correctly?

14 MR. MAYE: That's -- you're right. You're right,
15 Your Honor. I think 32, 33, 34, 35, 36, 37, 38... I think
16 they're all --

17 THE COURT: Well, I may have some questions on
18 those, so let's go one by one.

19 So 32, you agree, Ms. McLetchie, given the Court's
20 ruling and taking under advisement other topics that seem to be
21 similar to these issues that this is similar enough, because it
22 relates to the unrelated investigations?

23 MS. MCLETCHE: Yes. Sorry.

24 THE COURT: And it looks like 34 is -- 33 and 34 are
25 as well. So I'm just trying to -- you know, if we get through

1 these and I'm going to be taking these under advisement, I want
2 to just get them all together so that I can do that, we can
3 take care of the rest. Because I don't have questions on 34
4 either, and that appears to be *other complaints*.

5 MS. MCLECHIE: Yes.

6 THE COURT: All right. So 35, though, let me...
7 Right. So let me -- 35, I do have a question, so let me read
8 that into the record and go with that. So Topic 35 is the
9 details of any instructions that any person in Frontier's
10 management has given to any person assigned to Frontier's
11 customer relations department, regardless of whether the
12 recipient was in a managerial position or not managerial
13 position and including, without limit, any of the customer
14 relation employees working on the Denver team of customer
15 relations and about how the recipient or the employees working
16 under the recipient should respond to complaints alleging
17 racial discrimination, ethnic discrimination, or other forms of
18 discrimination and/or about how such person should code,
19 classify, or index complaints that contain allegations of
20 discrimination.

21 Again, Frontier argues that the Court's already
22 ruled on the unrelated complaints and that they are irrelevant.

23 Plaintiffs argue they're relevant to the details of
24 the special panel that Frontier has established in its
25 corporate office to receive and bury complaints of

1 discrimination.

2 And so my question would be, are there allegations
3 that Frontier's management improperly responded, coded, or
4 classified complaints related to this incident, or are you
5 seeking a lot of other incidents? And if that's the case, then
6 it probably falls under this category of topics that talk about
7 other investigations that are the big issue here today.

8 MS. MCLECHIE: Both, Your Honor. And I do want to
9 point out, both regard -- with regard to 35 and 36, I think
10 they both highlight why snowballing a prior discovery order on
11 prior specific discovery of unredacted passenger complaints, I
12 think that's exactly -- I think this shows exactly why that's
13 problematic.

14 Here, for example, we discovered that there's this
15 team in Denver that handles all complaints about racial
16 discrimination and that, essentially -- we want to ask more
17 questions about things that we have been able to discover.
18 Certainly the Court did not say any of this information -- none
19 of this information was irrelevant. The Court allowed us to
20 get some complaints. The Court allowed us to do discovery on
21 issues regarding complaints of this -- in this case and other
22 complaints.

23 In the process of doing that discovery, which
24 usually happens before a 30(b)(6) deposition, we want to know,
25 what are these templates that were -- for example, in Number

1 36, not to skip ahead, but that were testified to? We want to
2 understand more about the evidence that we have gathered so
3 far.

4 But I also want to be clear, Your Honor, and that's
5 usually how discovery goes, you get information through written
6 discovery and through witness depositions and then you do the
7 30(b)(6) deposition, but I also want to be clear. I've heard a
8 couple of times that we don't have evidence, we haven't proven
9 or established. We don't need evidence to get evidence. We
10 have allegations. But we certainly have started to gather
11 evidence and information through the process of discovery that
12 then leads to appropriate 30(b)(6) topics, which I think many
13 of these are appropriate 30(b)(6) topics. And I'm assuming
14 that we'll have some general discussion at the end about
15 whether this -- the Document 232, the last order on all of the
16 prior discovery, whether it precludes us from ever getting
17 other, for lack of a better word, pattern and practice or
18 complaint information, and I don't think it does, Your Honor.

19 MR. MAYE: Your Honor, again, this was addressed by
20 Judge Dawson, and there's a limit. Your Honor ruled that the
21 prior incidents were -- or you and Judge Dawson determined that
22 the prior ruling, I think Docket 83, allowing for the
23 production of prior incidents, was collaterally relevant, and
24 since we produced thousands of pages of these -- pertaining to
25 these occurrences, Your Honor and Judge Dawson determined that

1 plaintiffs have not established a connection between the prior
2 incidents and the subject case; therefore, no further discovery
3 is permitted.

4 Judge Dawson said that, "the information plaintiffs
5 seek to compel lacks the substantive connection to their
6 individual case." Their assertion that the connection is that
7 the evidence will show a pattern and practice is speculative.
8 Therefore, Judge Dawson ruled, no more discovery on this stuff.
9 It's established -- or they have failed to establish a
10 connection; therefore, this stuff is not relevant, not
11 proportional.

12 THE COURT: All right. So I think 36 -- I do think
13 37 falls under this category, and so I'm going to -- I don't
14 need to hear any other argument on 37 either. I think that
15 fits into the category of taking that under advisement. And
16 I'm going to take 35 and 36 under advisement because -- well,
17 and I'll rule on those in a minute. So that leaves us with 38
18 and 39.

19 All right. So Topic 38, details of the destruction
20 in May of 2020 of the database that contained crew member
21 assignments for past flights or the rendering of that database
22 as no longer searchable.

23 Again Frontier argues this is unrelated complaints
24 and they are irrelevant for the reasons that they've outlined
25 at length here today.

1 Plaintiffs seek the details of the spoliation --
2 Frontier's spoliation of a critical database that would
3 identify the flight attendants and pilots who were working on
4 the flights on which the 338 discrimination complaints arose.

5 So, again, Ms. McLetchie, why -- on this one, why
6 wouldn't -- what is it about this request that doesn't -- or
7 that is different than the other ones talking about other
8 complaints?

9 MS. MCLECHIE: This is different because they --
10 essentially Frontier is making the circular argument that there
11 was no bad action taken by even any of the crew members that
12 were involved in this case because it's not in their employee
13 files. But that's not the real question. The question in this
14 case is whether there were complaints against them and Frontier
15 failed to take action such that -- or failed to even adequately
16 investigate such that it would be in their files. And
17 certainly I think we should be able to probe further into the
18 facts surrounding the destruction of the database. It
19 certainly would have allowed us to tie information regarding
20 complaints to the specific crew members in this case, and so
21 information about their failure to preserve this database in
22 the middle of -- and its destruction in the middle of this case
23 I certainly think is relevant.

24 Even besides the pattern and practice, it's relevant
25 to whether the actual crew members, the named and unnamed crew

1 members, the ones that are named defendants and the ones that
2 aren't, whether they were personally involved in other
3 complaints. We can't -- we cannot prove that because of the
4 destruction of this database.

5 THE COURT: What about their personnel files?

6 MS. MCLECHIE: This is -- this is the circular
7 issue, Your Honor. They say, "Look, they must not have been
8 involved. It wasn't in their personnel file." If they didn't
9 take action against them or they didn't even investigate, if
10 instead -- and this is why we want to get at information
11 concerning how these complaints are investigated, right,
12 whether -- if Frontier never takes action and never even puts
13 it in someone's personnel file, that is certainly also relevant
14 to our claims against Frontier for punitive damages.

15 So certainly information regarding the destruction
16 of this database is, I think, really central to our claims, and
17 it's not just about other complaints regarding other crew
18 members.

19 THE COURT: Well, so that, to me, might be the crux
20 is, are you wanting to ask questions about what was in the
21 database about other complaints, or do you want to ask
22 questions about, how could you possibly have destroyed this
23 database and would there have been information in the database
24 that wouldn't have been included in the personnel file?

25 MS. MCLECHIE: All of the things that you just

1 said, Your Honor, I think are appropriate for a 30(b)(6), and
2 we would be happy to clarify this question further, but I
3 think, in light of the issues in this case, I certainly think
4 those questions are all relevant questions for a 30(b)(6)
5 deposition.

6 THE COURT: So I would be inclined to allow you to
7 ask questions about the destruction, about what's contained in
8 the database, what's in it versus what's in the employment
9 files. I think the difference is, I need to decide whether I'm
10 going to let you get into the other complaints based upon the
11 arguments you made here today, and if I'm not, then I would
12 limit on this topic questions to those areas and not allow you
13 to get into questions of other complaints. If I decide to
14 allow that, then I would probably deny it as a whole on this
15 one. Does that make sense, Ms. McLetchie?

16 MS. MCLETCHE: Yes.

17 THE COURT: Because I do think, even if I say that
18 you're not allowed to get in -- if I stick with the decision
19 that counsel says we've already made in the case and I'm not
20 going to let you get into all the other examples despite your
21 arguments today, I still would be inclined to let you get into
22 some issues about how it was destroyed, why it was destroyed,
23 what would be in there that wouldn't be in the personnel files.
24 That, I think, would be relevant. And so to the extent that
25 that's the questions, I'm going to grant that right now.

1 To the extent that you want to get into the other
2 complaints and things that might have been destroyed, I'm going
3 to take that under advisement here and come back out and rule
4 on that.

5 MS. MCLEATCHIE: When you say "other complaints,"
6 just so we're clear when we're thinking through and preparing
7 for this deposition, Your Honor, do you mean other complaints
8 not against any crew members involved in this case?

9 THE COURT: I just -- I mean the other complaints
10 that you guys wanted to delve into to show the pattern and
11 practice unrelated to this and the parties involved in this
12 case.

13 MS. MCLEATCHIE: Other than the parties or the crew
14 members involved in this case?

15 THE COURT: The crew members, yes.

16 MS. MCLEATCHIE: Okay. So other crew members -- crew
17 members not involved in this case? So when you say "other
18 complaints," that's what you mean?

19 THE COURT: Yes. I mean other unrelated complaints,
20 other crew members, because the crux of my initial ruling in
21 precluding you all from doing that was it was just going too
22 far down the proverbial rabbit hole of, where's it going to
23 lead, it's too onerous on, you know, the defense, and so that
24 was the crux of that ruling. So as it relates to this topic, I
25 would be inclined to let you ask questions about this database

1 and what was in it vis-a-vis the employment file of an
2 individual and what might -- you know, are there other things,
3 just to delve into that, but limit you -- if I decide you're
4 not going to get into the other unrelated complaints, that you
5 wouldn't be able to get in and ask, what other unrelated
6 complaints would be in that database?

7 MS. MCLECHIE: Understood.

8 THE COURT: Having said that, Counsel?

9 MR. MAYE: Your Honor, again, Your Honor and Judge
10 Dawson already ruled on this, that there can't be spoliation
11 when the information being sought is not relevant or
12 proportional.

13 Also, this information was never even asked during
14 discovery. They're asking for Frontier to find the crew
15 assignments for every one of those flights that were related to
16 a prior unrelated incident. And they want that information
17 because they want to interview the crew members to ask about
18 the prior incidents and --

19 THE COURT: But I'm already saying I wouldn't let
20 her get into that. I think she'd be limited -- unless I change
21 my -- you know, unless I reconsider the ruling and allow them
22 to get into some of these things based upon what they've
23 discovered in evidence and her arguments today, unless I change
24 that ruling, she wouldn't be allowed to get into that. It
25 would just be specifically, how did it get destroyed, what are

1 the details of it being destroyed, what was in there, what was
2 in there that might not have been included in employment files?

3 MR. MAYE: They're two different systems. They have
4 received everything regarding the personnel files of the crew
5 members involved. This other database, it wasn't destroyed.
6 It wasn't destroyed. It -- so --

7 THE COURT: Well, again, can't the witness, then,
8 sort of answer or flush out what happened or whether it was
9 destroyed or not destroyed? Again, without getting into other
10 complaints, if I limit that -- and, again, I'm not sure which
11 way I'm going to go, but I'll have a decision here in a few
12 minutes. If I limit that, then she'll be precluded -- or
13 they'll be precluded from getting into that, but they would be
14 at least able to ask limited questions about, what is this
15 database, was it destroyed, what happened, were there things in
16 the database that weren't in the employee files? And that
17 would be essentially the extent of just getting into what
18 happened with this database, because I think that would be
19 discoverable.

20 And like I said, if I rule that they're not going to
21 be able to ask about other complaints, then she won't get to
22 ask about what other complaints are in that database. She'll
23 be precluded from all of that. All right?

24 MR. MAYE: Yes. Thank you, Your Honor.

25 THE COURT: All right. Last but not least, Topic

1 39, a witness to authenticate as business records of Frontier
2 all the documents listed on Exhibit 8 to Plaintiffs' Fourth
3 Request for Admissions to Defendant Frontier Airlines; or if
4 Frontier disputes that portions are retained as its business
5 records, to authenticate the portions of such documents that
6 are its business records.

7 Frontier argues this seeks irrelevant information
8 and the Court already ruled that plaintiffs' request that
9 Frontier admit that over 2,000 pages of documents were
10 authentic business records was neither relevant nor
11 proportional.

12 Plaintiffs respond that authenticating these at the
13 deposition would be laborious but far less laborious than
14 having a custodian witness at trial.

15 So I assume, then, Ms. McLetchie, these are
16 unrelated complaints that you want authenticated; is that
17 right?

18 MS. MCLECHIE: It's a number of records that
19 they've produced. We've asked them to admit the authenticity,
20 and I think the issue here is that they're -- that Frontier is
21 conflating their view about what's relevant and proportional
22 with a reasonable request to authenticate business records that
23 have been produced in this case that the Court has found to be
24 relevant and proportional to the needs of the case.

25 We're not talking about getting -- this is not --

1 this has nothing to do with the debates we're having today
2 about whether we're entitled to additional information; it's
3 about whether the limited information that the Court allowed us
4 to get we can even try to get authenticated, right? And so, in
5 my view, this is information that we were permitted to get
6 that, for whatever reason, Frontier's refusing to be reasonable
7 and authenticate and that we want to be able to address
8 authentication at the 30(b)(6) deposition.

9 THE COURT: And, again, lay out for me why. Is it
10 also a trial thing, to just get rid of a step?

11 MS. MCLECHIE: Yeah. And we want to -- and also
12 for motions for summary judgment. We want to address -- we
13 want to address the authenticity of these records. And it
14 would be very efficient.

15 I don't think Frontier is really, really saying that
16 they're not authentic records. They produced them. They
17 should just be reasonable on this, to the authenticity.
18 They're not, and so we need to be able to deal with this at the
19 30(b)(6).

20 MR. MAYE: Again, this has already been addressed by
21 the Court. Most of the documents are the unrelated complaints.
22 Certainly, if the case goes to trial, we will be, you know,
23 stipulating to the authenticity of relevant documents.
24 They've --

25 THE COURT: Are there other documents -- so I get,

1 given the Court's rulings, and unless I overturn that, you
2 know, when I go back in chambers and come back out and make my
3 final ruling, I get that your position is, if it's unrelated
4 complaints, they shouldn't be authenticated and you shouldn't
5 be required to do that, but to the extent there's other
6 discovery, other business records and things that are not, are
7 these things that you're going to object to authenticating
8 them?

9 MR. MAYE: No, Your Honor. They've lumped together
10 2,000 pages of documents that -- you know, authenticate these,
11 this batch of documents. If they want us to stipulate to the
12 authenticity of portions of the flight attendant manual, of
13 course we're going to do that. This is all about prior
14 incidents. That's what it was. 2,000 pages, admit these are
15 all authentic, you know, that these were created in the course
16 of business, we can't do that.

17 THE COURT: All right. So, Ms. McLetchie, to the --
18 is the vast majority of this *other complaints*, or is it other
19 documents that are just business records?

20 MS. MCLECHIE: It's both. But I want to be clear.
21 The Court has never said prior complaints are not discoverable
22 in this case. The Court -- and then this Court limited them to
23 more narrowly than the District Court judge did eventually, but
24 we were allowed to get complaints over the last five years
25 regarding racial discrimination. So certainly -- certainly the

1 Court said further information, getting them in unredacted
2 form, isn't relevant -- or isn't proportional to the needs of
3 the case, but the Court has never said, those records are not
4 potentially discoverable or relevant.

5 I don't want to -- I think this is the issue: We're
6 trying to take a discovery order on a limited discovery dispute
7 based on the showing that was before the Court and then try to
8 shoehorn the rest of the case and say that these -- the Court's
9 already decided that none of these complaints are relevant. We
10 don't have to make an evidentiary showing, but the Court didn't
11 even have the complaints, obviously, before it when it
12 addressed the prior questions, but it did allow us discovery on
13 prior complaints. And so I think that Frontier is taking an
14 absurd limiting read of this Court's prior orders.

15 MR. MAYE: Well, I think the prior orders speak for
16 themselves, and Your Honor and Judge Dawson ruled that they
17 were produced because they were collaterally relevant. Once
18 produced, it became clear that the substance of these
19 complaints are completely unrelated to this incident and
20 they're not relevant, not proportional, so I would disagree
21 that the interpretation is absurd.

22 And with respect to authenticity, of course we will
23 agree to stipulate to the authenticity of our documents
24 produced during discovery that relate to our policies, our
25 procedures, but these -- the vast majority of these documents

1 are related to the prior incidents, including statements
2 submitted by other people not created by us.

3 THE COURT: Is there a way that you can split out
4 the things that you can authenticate that don't fit into these
5 other complaints and --

6 MR. MAYE: Absolutely.

7 THE COURT: -- other things like you just described,
8 whatever --

9 MR. MAYE: Yes, absolutely.

10 THE COURT: -- that you can authenticate out of
11 these 2,000?

12 MR. MAYE: Sure. Absolutely, yes.

13 THE COURT: And what you're saying and what your
14 protective order seeks is a protective order over the other
15 complaints that you, again, have argued continually this
16 afternoon are already the subject of discovery orders, and
17 that's why you don't want to authenticate those?

18 MR. MAYE: Yes, Your Honor. I think we can do this
19 in a more efficient manner or more productive manner. I don't
20 know why this is an issue --

21 THE COURT: Is this something that could be
22 stipulated before trial so that you don't have to call
23 witnesses in?

24 MR. MAYE: Absolutely. Absolutely.

25 MS. MCLECHIE: Your Honor, I just want to make

1 clear, there's never been a ruling by this Court on at least
2 (indiscernible) the case, but it became clear that these other
3 complaints were irrelevant. The Court has never made a ruling
4 on summary judgment. The substance of the other complaints is
5 not -- has not been before the Court. The Court previously
6 addressed whether we could get -- whether we could get the --
7 whether we could get the plaintiffs' names.

8 And I also want to point out that these are Frontier
9 documents. Frontier customer representatives take calls. The
10 only way you can make this kind of complaint is by calling in.
11 Frontier customer service representatives populate the
12 complaint, and that's the report that's created. It is not
13 customers writing letters, "Dear Frontier Airlines: This is
14 what happened." These are documents. There's a form. And
15 that was one of the topics that we were discussing earlier.
16 There's a form and a template that Frontier uses to document
17 what the agent -- what the agent summarizes regarding these
18 complaints. These are Frontier documents. These are not
19 things that they're receiving.

20 MR. MAYE: Your Honor, I think -- I think counsel
21 made a good faith argument there, but she's mistaken. A lot of
22 the documents are documents created by customers. They go onto
23 Frontier's website and they submitted to Frontier, so they're
24 created by the passengers, not created by Frontier. So I think
25 this is something we should be able to work out, but certainly

1 we object to authenticating prior unrelated complaints
2 submitted by passengers.

3 THE COURT: All right. So I think I've ruled on
4 everything except -- and correct me if I'm wrong, please -- 4,
5 6, 8, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39. And now on
6 38, I've sort of alluded which way I was going depending on
7 what I'm doing with these *other complaint* issues. Is that the
8 parties' understanding of where we're at?

9 MR. MAYE: I'm sorry, Your Honor, could you go over
10 that again? I apologize.

11 THE COURT: The ones we have left -- and I will say,
12 the ones we have left, it is essentially this issue of, has
13 what's occurred since the last discovery rulings in the course
14 of discovery and the information that plaintiff has uncovered
15 change the circumstance such that my prior ruling and Judge
16 Dawson's affirmance of that ruling not allowing the plaintiffs
17 to delve into all these other complaints and the like, whether
18 I now allow with these questions of the 30(b)(6) witness the
19 plaintiff to delve into these areas. And so the topics that
20 address that, address the *other complaint* area, are Number 4,
21 Number 6, Number 8, Number 30, 31, 32, 33, 34, 35, 36, 37, 38,
22 and 39.

23 And, again, as I've indicated, 38, I'm inclined to
24 allow some questions, but if I decide the other complaints are
25 still irrelevant and continue to follow that ruling, then you

1 would not be allowed to question on Topic 38 as to other
2 complaints but, rather, the destruction of the database.

3 And then 39, again, the authentication of the
4 records relates to the other complaints, and so I'm going to
5 take that under advisement here and go to chambers to consider
6 these and will come back out in a few minutes and rule on the
7 others.

8 Am I missing any?

9 MR. MAYE: No.

10 MS. MCLEATCHIE: No, Your Honor.

11 THE COURT: And, Ms. McLetchie, do you have that
12 case available that I could take to chambers to look at it?

13 MS. MCLEATCHIE: Well, it's the case the Court relied
14 on before, and I just want -- what I want to point out about
15 that case --

16 THE COURT: Just if I don't have to go pull it
17 again --

18 MS. MCLEATCHIE: No. No. It's the *Karrani* case.
19 And I know the Court relied on it in its prior decisions, and I
20 don't know that the record was clear enough in the prior
21 briefing that we are seeking -- we are -- we did name Frontier
22 as a defendant in the 1981 claim. In *Karrani*, the airline was
23 not the defendant. The question was whether the defendant
24 flight attendant had engaged in racial discrimination. And
25 what happened there is the prior ten -- the plaintiff was able

1 to obtain a broad amount of discovery, ten years of prior
2 racial discrimination claims, I believe, against that crew --
3 that crew person.

4 This is different because we are alleging --

5 THE COURT: So if it was just against the crew, you
6 should certainly get it here because it's against the whole
7 airline and it fits into your theory that the airline is
8 liable, given their pattern and practice and...

9 MS. MCLEATCHIE: Yes, and it's -- because when --
10 because we want to show that Frontier -- we should be able to
11 show -- and, in fact, we've been able to discover in discovery
12 that there are two and a half complaints a week for the last
13 five years on just the domestic airlines. We are entitled to
14 be able to prove reckless indifference to civil rights
15 violations.

16 THE COURT: All right. Briefly, Counsel?

17 MR. MAYE: Oh, yes, sir. I think Number 27 is also
18 related to prior incidents.

19 MS. MCLEATCHIE: I believe you ruled on 27.

20 MR. MAYE: Did you grant 27?

21 MS. MCLEATCHIE: He denied 27.

22 MR. MCKAY: We're going to provide a list of
23 questions.

24 MS. MCLEATCHIE: We're going to provide a list of
25 questions in advance, yeah.

1 THE COURT: Yes.

2 MS. MCLEATCHIE: We agreed to do that, yeah, so we
3 will do that.

4 MR. MAYE: So, Your Honor --

5 THE COURT: And then I said on that one that the
6 list of questions, if I say that unrelated complaints are
7 irrelevant and not proportional and I continue with that
8 ruling, then the questions wouldn't include that on that one.

9 MR. MAYE: Okay. We have a copy of *Karrani*, and
10 just for clarification, the *Karrani* case, the defendant was
11 JetBlue.

12 MS. MCLEATCHIE: The defendant was JetBlue, but the
13 plaintiffs -- the plaintiff was not seeking information about
14 further complaints against JetBlue. The plaintiff sought and
15 was given further -- there were complaints against the crew
16 member defendant over the span of ten years, and the *Karrani*
17 decision said, despite the broad scope of discovery, you've
18 only been able to get one witness. Those were unredacted
19 complaints. It was a different issue.

20 THE COURT: All right. This is getting awfully
21 close to counsel sort of discussing the case and not arguing to
22 the Court. I'm going to take a recess here for a few minutes.
23 The parties can remain at ease, and then I'll come back out and
24 rule on the rest of those matters. So I'll be back in a
25 second.

1 (Recess from 4:45 to 5:12 p.m.)

2 THE COURT: All right. We are back on the record in
3 Peter DelVecchia, et al., versus Frontier Airlines. I have
4 taken a few minutes and gone back and reviewed some of the
5 prior orders and some of the other issues related to the case,
6 and so let me tell you where I'm going with this and what my
7 thoughts are and what my decision is.

8 I do think, in reviewing my prior order, or the --
9 and Judge Dawson's order affirming my order, and in reviewing
10 those, I recall that I specifically had concerns at the time
11 with a couple issues as it related to the other complaints and
12 the identity of the individuals in those complaints. And I
13 know specifically the two big issues that I had at the time as
14 it related to the case law and the issues I had to consider
15 were that, number one, divulging the name or the names of all
16 of those complainants could create all sorts of different
17 issues, not the least of which was privacy issues and those
18 people potentially being contacted. And I had, you know, grave
19 concern, which is why I ruled as I did, that the names would
20 not be provided.

21 And then, secondly, the Court had grave concerns
22 that, as the rules of evidence contemplate, parol evidence rule
23 and some of the others, that we would end up in multiple mini
24 trials of these other complaints to try to see how they played
25 into this complaint and whether Frontier, you know, lets this

1 go on -- lets these types of acts go on and then we would just
2 have, you know, multiple mini trials about other incidents.
3 And so that's why I limited it to five years and the complaints
4 and that's what was provided.

5 When I look at that, I do think the defense is
6 overreading or at least giving an overbroad interpretation of
7 those rulings, because as I hear the plaintiff now argue
8 twofold, number one, that with more discovery, they believe
9 that they can prove that Frontier knew about this, condoned
10 this, created an atmosphere to allow this, however you want to
11 talk about it, but whatever the liability that Frontier would
12 have, the discovery the plaintiffs tell me has shown that has
13 helped with these complaints, that they have a culture of
14 allowing this to happen and that flows right into their
15 arguments for Frontier's liability and that they should
16 therefore be allowed to ask the 30(b)(6) witness questions
17 about that, questions about whether there are consequences for
18 employees not following policy and whether employees are
19 subject to consequences that Frontier's doing anything about
20 this. And I recognize that, as Ms. McLetchie argues, that some
21 of my rulings previously, not only specifically directed them
22 to use other discovery techniques to get information, but
23 suggested there were other ways that they could get the
24 information without me granting their requests for names and
25 the scope of discovery that they wanted, and so I limited it.

1 But I certainly think at this stage that what
2 they've discovered in the course of the discovery, or
3 uncovered, what their theory is as it relates to Frontier's
4 involvement in this and just the fact that these are topics
5 that a 30(b)(6) witness would generally be able to answer, I do
6 think they should be allowed to ask questions about what
7 Frontier does with these complaints. I think this is different
8 than getting names and going into all of the, you know, ten or
9 15-year history, which is why I limited it to five years.

10 And so as it relates to Topic 4, 6, 8, 30, 31, 32,
11 33, 34, 35, 36, 37, and 38, I will deny the request for a
12 protective order and I will allow the plaintiff to ask
13 questions regarding what Frontier does with these complaints,
14 how they handle them, if employees are disciplined, the issues
15 that they have indicated they are going to be asking. Again,
16 you're not entitled to ask names, you know, to delve into mini
17 trials on each one of these.

18 I would note specifically that Rule 30(d)(1), when
19 it talks about these depositions or examinations, limits them
20 to one day and seven hours, and so, Ms. McLetchie, you'll have
21 to figure out what topics and what areas you want to get into
22 within the course of this order, but, again, I want to make it
23 clear that the names and specifics of those complaints, you
24 know, again, are off limits, not the specific of the complaints
25 but the names.

1 And then, really, I think I'll leave it to you,
2 Ms. McLetchie, and your counsel as to what you guys want to do
3 with your examinations, but, really, the intent of the Court is
4 to allow you to get into what Frontier does or doesn't do with
5 these complaints; whether their procedures, policies, allow
6 this culture to exist; whether they condone it, you know, those
7 sort of things so that you can develop your case as you see fit
8 against Frontier Airlines.

9 As it relates to 39, I am going to order the
10 defense, to the extent that you can authenticate the records
11 that you're comfortable authenticating, that you do that -- or
12 not do that but allow your witness to do that, or maybe before
13 the deposition you all can get those records together and do
14 that and agree on it. And then I would say that -- ask you
15 guys to meet on the remaining records and see if agreements can
16 be reached; and if not, then we can address the authentication
17 issue once that's been narrowed down at a later time.

18 But I heard counsel tell me that there were a fair
19 amount of those records that you would agree to authenticate,
20 so I would ask that you all get together, do that, and then
21 what issues remain on the authentication if you can't agree
22 with, then I guess you'll bring them back to the Court and
23 we'll address that issue at that time. But I think it's
24 probably easier to -- you know, to the extent you guys can
25 address that and to the extent you want to use your seven hours

1 on authenticating documents, I'll leave that to you as well.

2 But, again, I think that can be done in other means during the
3 course of the case before trial.

4 But I -- so I will grant the protective order to the
5 extent I will not ask the defendants to authenticate all of the
6 documents. I will simply ask you to go and review the
7 documents that you can authenticate in good faith and not have
8 a problem with. The ones that you object to, we can address it
9 at another time. And I will grant the protective order as it
10 relates to the ones that you object to, and we can address that
11 if you want to raise the issue, Ms. McLetchie, later on,
12 arguing that you should be able to have access or get those
13 authenticated.

14 All right. I think that addresses everything, but I
15 think when I went back to chambers I left the stipulation back
16 there. So before I get to the stipulation, let's talk about
17 215. Is there anything else that you want to raise as it
18 relates to 215?

19 MR. MAYE: Well, Your Honor, I do want just a little
20 more clarity on what can be asked because --

21 THE COURT: Well, I'm denying the protective order.
22 The prior discovery orders still are relevant to the case and
23 so, I mean, they're not going to be able to say, give us the
24 names of the people.

25 So, for instance, on 8, they want to ask the number

1 of times between March 28, 2014, and March 28, 2019, any
2 employees subjected to consequences as a result of -- I mean,
3 so they can ask that. What consequences? Was there
4 discipline?

5 MR. MAYE: In your order, Document 192, you ruled
6 that more evidence regarding the unrelated complaints and
7 Frontier's handling of the complaints in general... I'm sorry.
8 "As discussed more fully above, *Karrani* and *Acton* are
9 persuasive, and based on those cases, the Court does not find
10 more evidence regarding unrelated complaints and Frontier's
11 handling of the complaints to be relevant to plaintiffs' case,"
12 so it appears that your ruling contradicts that, and it's --

13 THE COURT: Well, what page is that on of the 14 --

14 MR. MAYE: That's Page 12 of Document 192.

15 THE COURT: What line is this?

16 MS. MCLECHIE: Your Honor, if I may, I think the
17 issue is taking that out of context. As the Court already
18 pointed out, the more evidence that we were trying to get in
19 that information was the contact information of the third-party
20 passenger complainants. We wanted to interview them and get
21 information and get their side of the story.

22 The further -- the Court wasn't generally issuing a
23 protective order against all evidence regarding these
24 complaints; it was addressing the more evidence that was at
25 issue in those motions to compel.

1 THE COURT: And, I mean, I'm reading that, and
2 that's what it's talking -- that was my concern. So to ask --
3 so I'm just saying, your reading of my order is far more
4 expansive than I intended it to be at that stage, because now
5 we're at a 30(b)(6) who's going to be asking your
6 representative about what was done with these complaints, as
7 opposed to getting into interviews of -- I mean, because that
8 was my concern, as Ms. McLetchie pointed out, the fact that
9 they would go out and contact these people who don't want to be
10 contacted, reinterview these people that don't want to be
11 reinterviewed, open up all these little mini trials of all
12 these other little things, and that, to me, was just overbroad
13 and not proportional. But now when they're simply asking a
14 30(b)(6), you know, *When you get this complaint and you had*
15 *this, what do you guys do? Are you doing anything? Are you*
16 *not doing anything*, that doesn't get to that point. And so
17 that's why I think it's an overbroad reading.

18 MR. MAYE: But there's already been a ruling by Your
19 Honor and Judge Dawson that these prior complaints are not
20 connected to the subject incident and --

21 THE COURT: Yes, but to the extent how Frontier
22 handled them and the context of their complaints against
23 Frontier and what's come up in the discovery since then, I
24 think limited questioning of a 30(b)(6) witness in a seven-hour
25 deposition isn't disproportional or overbroad.

1 Now, as it relates to -- and I don't have the number
2 in front of me. Do you all have the number on the stipulation
3 of the other examination?

4 MR. MICHALEK: 248, Your Honor.

5 THE COURT: All right. So as it relates to 248 --
6 thank you -- I will grant that stipulation as it relates to the
7 scope of that examination. Now, is there anything else I need
8 to address on that? It looks like the parties have agreed to
9 it.

10 MR. MICHALEK: We have, Your Honor.

11 THE COURT: Okay. Counsel?

12 MR. MAYE: Yes, Your Honor.

13 THE COURT: Okay.

14 MR. MAYE: A couple of things, Your Honor. There
15 were, like, 320 prior complaints. Only 160 related to Frontier
16 Airlines. 100 and, I think, if my math is right, 170-something
17 were related to third-party vendors, not Frontier. So now we
18 just have 160, and these 160, the Court already ruled that the
19 substance of the complaints, there's no connection to the
20 subject incident.

21 And also, the Court ruled that pattern and practice
22 cannot be pursued for discreet discrimination claims. Their
23 pattern and practice can be pursued for class actions, which is
24 not what we have here. And Your Honor also ruled that the
25 *Karrani* Court's analysis is persuasive here and that evidence

1 of past complaints by others is only relevant in limited
2 circumstances where a plaintiff can make a showing to connect
3 them to his claims. This is not one of those limited
4 circumstances. And that was -- that ruling was made in the
5 context of plaintiffs' claims against Frontier.

6 The Court determined that the only relevance of
7 these prior complaints would be to potentially prove the state
8 of mind of the actors involved in this incident and it couldn't
9 be used to show pattern and practice with respect to Frontier.
10 The concern is, we have 160 complaints against Frontier, which
11 is very, very, very miniscule, 160 complaints over a five-year
12 period with, I think it was 5 million passengers, so the
13 percentage was, you know, less than -- it was, like, point
14 0000. So we're not sure how a 30(b)(6) can take questions
15 about 160 complaints about disciplinary actions taken against
16 flight attendants when there's no evidence that these claims
17 have merit. So we still have to do a trial within a trial.
18 We're talking -- you know, we're talking about a passenger who
19 is upset that they were charged a baggage fee and they're
20 claiming speculatively that --

21 THE COURT: You know, if she wants to spend her
22 time, seven hours, on that, isn't that good for you? If she
23 wants to talk about complaints like...

24 MR. MAYE: Well, I just think that this rule has --
25 this issue has been resolved already.

1 THE COURT: And that's -- and you've argued that a
2 number of times today, and that's what your argument was for
3 almost all of the objections, all of the requests for
4 protective order. So I understand that --

5 MS. MCLECHIE: And just to be clear for the record,
6 the Court has not reviewed all of these complaints and
7 determined that they are not relevant or -- the Court hasn't
8 made a summary judgment order in this case.

9 THE COURT: We don't need to make any more records.
10 I've already ruled. I know one side, as always, disagrees and
11 doesn't like the ruling, and I understand that, but I've made
12 my decision, and you all can take whatever action you think is
13 appropriate.

14 And, again, I would just encourage, when this
15 deposition comes around, that, you know, you keep it relevant,
16 keep it pertinent. Don't re-ask the questions. You know all
17 that. It just makes me feel better to tell you that.

18 MS. MCLECHIE: Of course.

19 THE COURT: All right. Anything else from the
20 plaintiffs, Ms. McLetchie, Counsel?

21 MS. MCLECHIE: No, Your Honor.

22 THE COURT: All right. From the defense?

23 MR. MAYE: No, Your Honor.

24 THE COURT: All right. Thank you very much. Court
25 is in recess. Enjoy the rest of your evening.

1 (Proceedings concluded at 5:30 p.m.)

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3 I, Judy K. Moore, a court-appointed transcriber, certify
4 that the foregoing is a correct transcript transcribed from the
5 official electronic sound recording of the proceedings in the
6 above-entitled matter.

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8 Date: June 22, 2023

9

10 /s/ Judy K. Moore

11 Judy K. Moore, CRR, RMR
12 Official Court Reporter
13 United States District Court
14 District of Nevada

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